

DMR ADVISORY COUNCIL MEETING
June 15, 2005, 1:00 p.m.
Minutes

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on this date at the Department of Human Services Central Offices Conference Room, 442 Civic Center Drive, Augusta. AC members attending this meeting included **Dana Rice, Sr. - Chair, Al West – Vice Chair, Mike Danforth, Rod Mitchell, Bill Sutter, David Turner, David Pecci, Scott Tilton, Vincent Balzano, Susan Farady, Timothy Kief and Glen Libby.** Council members **Dana Temple, Craig Pendleton, and Larry Knapp - Secretary** were unable to attend. Department staff included Commissioner George Lapointe, Deputy Commissioner Lewis Flagg and Sgt. Steve Ingram, MPO Donaldson Boord, Terry Stockwell, Sarah Cotnoir and L. Churchill. Other attendees included Sebastian Belle – MAA, Susan Jones – CFN, John Druin – Chair Lobster Management Council Zone A, Brad Peabody, Kyle Parker, Steve Strout, Richard Pinkham (Steuben), Lawrence Young Jr. (Gouldsboro), Kevin McKenna (Steuben) and Ronald Trundy (Steuben).

1. Welcome

Chair Dana Rice called the meeting to order. New members Vincent Balzano, Susan Farady, Timothy Kief and Glen Libby were introduced.

Commissioner Lapointe gave a brief review to members on the by-laws regarding voting. An abstention is equal to a negative vote under the statutes. To the visitors in the audience he reminded them that non public comment is allowed at the point in the rulemaking process as the public comment period has closed. Discussion takes place between the members and staff only. The Commissioner also welcomed the new members.

Chair Rice shifted the rulemaking item on Zone A to the next item on the agenda.

3. Regulations - Action (voting) (see handout)

Chapter 25.93(F)(1)(b)(vi) Exit Ratios for Limited Entry Zones – Zone A

Terry Stockwell gave a review of the rule and its development, see handout for details. He wished to underscore that the process has followed the law, regulations and bylaws to a "T". Clarifications included explaining that students under 18 enter without going on a waiting list, which allows them to enter up until they are age 18 not after; there are five other zones have an exit ratio and one zone does not have an exit ratio, which is Zone C.

Comm. Lapointe went into detail about a new "grandfathering" law that will become effective 90 days after the legislative session adjourns. There are two components to be aware of. One part allows grandfathering when a zone changes an existing exit ratio. This would not apply to Zone A since this zone does not have an existing exit ratio. The second part applies to when an exit ratio is considered by a lobster management council in which they may consider exempting certain persons to enter the zone in accordance with the previously existing exit ratio when those persons have 92% of the hours and 92% of the days in the apprentice program completed retroactive to October 1st, 2004. This law goes into effect in August; however, the Zone A Council must vote if they want to avail themselves to this clause. Remember that an exit ratio may not be revisited to change for at least 24 months.

Chair Rice: The Chair requested a motion to precede the discussion.

Motion: (M. Danforth, R. Mitchell) *Motion to accept the rulemaking in Chapter 25(F)(1)(b)(vi) Exit Ratios for Limited Entry Zones – Zone A as written.*

Discussion:

M. Danforth: Out of fairness to persons the apprentices should be allowed to finish the program they started. He is not opposed to conservation. Polling any industry in Maine on this type of issue will result in a negative response.

G. Libby: Have other zones been impacted by the grandfathering issue?

Comm. Lapointe: Not yet since this law is not yet in effect.

D. Turner: There have been several of these (exit ratios) and this seems to have the largest number of persons impacted.

Comm. Lapointe: When you agree to a limited-entry process it means persons inside and out and to control effort does impact persons. These are incredibly tough decisions. We started on limited-entry in 1999 and each person is impacted.

A. West: Are members of Lobster Zone Council mandatory to be full time lobstermen?

T. Stockwell: The lobster zone council members are nominated by their peers; the councils do not include non-commercial license holders.

A. Wet: Why the 3:1 or 1:1, why not split and have 2:1?

T. Stockwell: The preferred ratio was 3:1 as voted on at their meeting and because 162 persons asked for 1:1 it was requested to also be considered as a fall back option.

Comm. Lapointe: The ratios are a manifestation of the zone council process using co-management to put this item forward.

B. Sutter: On the tag data, all the fishermen that I know buy all the tags they call to avoid losing tags later and therefore feel that the tag information is inflated. Regarding limited entry and student entrants, as long as the students under 18 do not have to wait to enter this is an issue that first needs to be addressed as this is not controlling effort. The grandfathering clause from the Legislature should apply to this. The law started at 75% and ended at 92% as a compromise. Was grandfathering considered on a zone that did not have an exit ratio?

Comm. Lapointe: Zone C will also be subject to the 92% because it is a zone without a ratio. When we talked about the grandfathering provision, we looked forward, not back. The tags versus numbers of traps are a dilemma; when the numbers are looked at we use a surrogate of 2/3rd of the tags issue; and yes there has been buildup of traps and tags over the years. This doesn't address effort reduction. At the last Lobster Advisory Council meeting, we brought it before them and talked about steps to move forward in the fall. We've spoken with both the LAC and the lobster zone councils about effort. The discussions are ongoing and we will continue to work moving these issues through the lobster councils and to the Legislature.

M. Danforth: If there has been only an increase of 27 licenses in 7 years and the trap congestion is a great as they say then we need something other than this but we're not here to address that. We're here to consider the Lobster Zone A council's request based on the process/options they have in co management of their zone. Zone A is the largest zone as this compares to the other zones A to F.

S. Faraday: How does the 40% response compare pertaining to the survey?

T. Stockwell: Good. The earlier questionnaire was on the low end of responses.

Comm. Lapointe: In our polls lobster fishermen are not better or worse than other people in terms of response rates. It is also important to note that the surveys, questionnaires, and other information is sent to all license holders.

B. Sutter: A couple of comments; he opposes the change in the middle of the road but agree with the co management philosophy that persons do have a right to say; a bumper sticker: "The world is run by those who show up".

V. Balzano: Clarification, this was submitted by the Zone A Council?

Comm. Lapointe: Yes

V. Balzano: Hate to limit the fishermen, please explain the impact to full time fishermen.

T. Stockwell: Quite a bit. At the time the Zone A Council voted on this 9 persons qualified, 37 qualified as of today and another 15 qualify to March 13, 2006 if considering the restriction of no changes for 24 months. The under 18 persons who once they become eligible can still get in. The questions are who are we saving this fishery for and why are students under 18 being saved? Student licenses have remained sacred as long as they complete their Apprentice Program, they're in. This is one tool to address resource and crowding issues. Out of the 194 we do not know how many are Under 18, apprentices or in other categories until they complete their paperwork and submit it to the Department.

V. Balzano: They can get a full-time commercial license under 18 and get 300 traps?

Comm. Lapointe: Yes. All 194 apprentices could get in if this doesn't get voted on today; then it cannot be addressed again for at least 24 months.

B. Sutter: If this is not passed how many get in, 40-50?

T. Stockwell: 37 are eligible right now.

B. Sutter: In 2006?

T. Stockwell: Unsure because the total of 52 on the list is the number so far who have completed some portion of the apprentice requirements. There may be others who have not sent information in.

Comm. Lapointe: No matter which way the 194 would go in.

B. Sutter: This is a dilemma with not wanting to change mid stream and unsatisfactory recent legislation. Could the rulemaking effective date be delayed to take advantage to the legislation when it becomes effective late summer?

L. Churchill: Selecting a different date now would be considered a substantive change requiring additional rulemaking.

B. Sutter: We can make a date change to address this dilemma. 52 getting into a large zone would be a satisfactory compromise.

Comm. Lapointe made a call to Assistant Attorney General Mark Randlett to inquire about voting on this, but with a future date. The AAG's interpretation is that it would be a substantive change to the rule.

D. Pecci: How does this compare to other zones?

T. Stockwell: We have 5 others zones that have entered the limited entry process without special considerations. If it's grandfathered to Oct 2004, 7 would get in.

V. Balzano: How many would be eligible regarding the October 2004 retroactive date for the new law? What is the number enrolled?

T. Stockwell: Seven more would be eligible; and estimating in the 180-190 range. The breakdown on the numbers is unknown; we do know that 52 have turned in their log books; we do not know how many of these are Under 18.

D. Turner: If this has been under discussion for 2 years this is not new regarding persons who could be impacted.

T. Stockwell: The 27 is the total net increase; the 314 are commercial fishermen and it is in the high 200's of persons who have dropped out.

M. Danforth: 314 versus 27 are two different ways to look at this.

G. Libby: What is the drop out rate?

T. Stockwell: About 30-50 per zone per year.

R. Mitchell: Are we eligible to vote on grandfathering on people over 18?

Comm. Lapointe: No.

Chair Rice: This is a difficult issue.

D. Turner: So were the Sea Urchin and Aquaculture issues.

M. Danforth: People from giant fishing families have called him and said this is not right. Keep the Apprentice Program and not have limited entry.

B. Sutter: This should affect the number of apprentices entering into it since October 2004. Those people after October 2004 knew going into it.

D. Turner: This process bubbled up hill. This came from individual fishermen up to us here at the top. This wasn't DMR or the Advisory Council initiating this. Other zones haven't had a problem with this. This Zone A limited entry discussion/process has been going on for 2 years now. People have had plenty of opportunity to speak up and talk with council members if they wanted something different. Many have even had an opportunity to complete the program since these discussions started two years ago.

Comm. Lapointe: Regarding the question B. Sutter asked about changing the effective date, it has been confirmed by our Assistant Attorney General that this would be a substantive change and beyond the purview of action today on this rule.

D. Pecci: If they wanted to get in and be heard 2 years ago they could have got their name in and moved forward with the existing ratio.

B. Sutter: Up until 2 years ago they knowingly did that and others before did not.

Comm. Lapointe: It is not taken likely to say that all persons are or have been impacted mid stream in this fishery. However, rules do change.

S. Farady: Explain the Zone A Council's deliberations in 2003-2004.

T. Stockwell: It has been a weighty issue that the council finally decided to tackle with a non-binding questionnaire. The survey responses (votes) are done in the privacy of the fisherman's own kitchen. A request was made for the Zone A chair to speak from the audience.

Chair Rice: Reiterated that all members of the audience may not speak at this point in the process.

S. Tilton: This ultimately is in regard to resource and an impact to landings. Is the resource healthy?

Comm. Lapointe: Yes. We need to make sure we keep the resource healthy. There has been lots of discussion about efforts in the fishery; the human component; the traps.

B. Sutter: Has the Lobster Advisory Council (LAC) met?

Comm. Lapointe: After the meetings at the Fish Forum they discussion was taken to the LAC. Then we went back to discuss from soup to nuts and asked them to narrow the list down. At the last LAC this was worked on. The example of students and exit ratios came up.

S. Tilton asked if there was motion to accept.

B. Sutter: Where is the LAC coming from in willingness to what you brought to them?

Comm. Lapointe: They are struggling with all issues, and like you, brought to them...they would like a package for the Legislature next year but as you know what goes in is changed or may not be what comes out.

G. Libby: Looking at the numbers it seems the majority voted for it, except students and apprentices, this seems to be the will of the public.

Chair Rice: We need to remember that it is the law you go by and we need to move on this.

A. West: What happens in two years if Zone A requests a 5:1 ratio to the apprentices?

Comm. Lapointe: Regarding the new law they could be grandfathered.

M. Danforth: Is the exit ratio reducing traps in other zones?

T. Stockwell: In two zones yes, in others it is up.

Comm. Lapointe: It is a manifestation of this process and why we're having these broader discussions on effort. This is one component. We don't have controlled entry with this fishery, just limited entry. There's the students and yearly buildup of tags.

G. Libby: We get swamped by Massachusetts at meetings all the time and we seem left out and this won't change. In the future he hopes persons will comment, say their piece.

Motion continued:

Affirmative votes: A. West, D. Turner, V. Balzano, D. Rice, R. Mitchell, D. Pecci, S. Farady, G. Libby

Negative votes: T. Kief, M. Danforth, S. Tilton, B. Sutter

The motion passed by a majority of affirmative votes.

2. Approval of minutes

A correction from member Craig Pendleton was noted and incorporated at the top of page 6.

Comm. Lapointe indicated that the letter to the lobster councils has not been done yet.

Motion: (D. Turner, A. West) *Motion to approve the minutes as corrected for the meeting held April 20, 2005.*

Discussion: None

Motion continued: *Unanimous to approve*

3. Regulations - Action (voting) (see handouts)

Chapter 34.10(1)(B)(2)(c) Recreational possession restriction – Winter Flounder

Dep. Comm. Flagg provided a brief review of the rule, see handout for more details. Much has already been taken care of on this matter by Amendment 13. Actions on this were to be in place by July 31st this year. There were few comments at the federal level on this issue.

C. Pecci: the Coastal Conservation Association supports this rulemaking.

Motion: (D. Pecci, R. Mitchell) *Motion to approve the rulemaking in Chapter 34.10(1)(B)(2)(c) Recreational possession restriction for Winter Flounder as written.*

Discussion: None

Motion continued: *Unanimous to approve*

Chapter 34.10(1)(B)(4)(a)(i) Summer Flounder, Commercial Effort Restrictions – Fluke

Dep. Comm. Flagg provided a brief review of the rule, see handout for more details. He explained that our quota has always been low and if exceeded it is subtracted from subsequent years. A few years ago this happened by one boat and put Maine out for years. Just this year we have a quota back and once again a boat from Rhode Island requested again to land in Maine. So this would be a permanent rule to discourage out of state vessels and provides the opportunity for our guys instead of having discards. Several states have given Maine some quota this year, approximately up to 9,000 pounds and for the purpose to avoid discards, not a targeted fishery.

Motion: (S. Tilton, R. Mitchell) Motion to approve the rulemaking Chapter 34.10(1)(B)(4)(a)(i) Summer Flounder, Commercial Effort Restrictions on Summer Flounder as written.

Discussion:

S. Tilton: How is it that the Rhode Island boat caught that amount back in 2001?

Comm. Lapointe: In January of 2000 a person could purchase a non-resident license and since there were no limits they could land the 21K or so amount of summer flounder. Emergency rules were put in place at the time not to land more than the quota. Then this year an inquiry came once again to land in Maine from a Rhode Island boat so we put an emergency rule in place and this would make it permanent.

A discussion followed about licenses.

G. Libby: He has a federal summer flounder permit and said that he has never caught them.

Comm. Lapointe: It is the persons who fish on George's Bank and is rather narrow as a bycatch fishery that should apply to Maine boats.

Motion continued: Unanimous to approve

4. Other Business

Comm. Lapointe announced that this would be Dep. Comm. Flagg's last meeting as Lew is retiring in August after 41 years of service.

Chair Rice: Also thanked Lew for his service and much commitment in his part.

Dep. Comm. Flagg provided a review of recent council meetings and activities see handout.

Topics discussed: scallop VMS; menhaden rules; general category scallop vessels; VMS and framework 17 and comment period; Scallop committee meeting; holding onto permits versus losing them if given up; and the push to eliminate the general category.

The members agreed that a quorum was unlikely for the meeting dates in July and August therefore the next meeting date would be September 21. The upcoming urchin season rules would be handled by ballot poll.

Questions were asked about the status of the budget and Comm. Lapointe gave a run down of the affect in the Department.

Comm. Lapointe will be attending the upcoming LNG meeting to be held in Machias; brief discussion.

Red tide matters were discussed. A disaster declaration has been started with USDA to help. Areas are open. The toxin levels are the highest in 30 years with readings of 3000-4000 [versus a cut off at 80µ/l]. This is also impacting lobster sales.

D. Turner asked if the Cobscook Bay meat count study/rules request was on his agenda.

Comm. Lapointe indicated that this is being discussed.

M. Danforth: A selective count versus a random meat count is unfair enforcement wise.

Comm. Lapointe: Two years ago the Cobscook Bay Fishermen's Association requested the meat count in regulations as the measure versus weight for enforcement reasons. Now the question seems to be is whether the meat count chosen is not working.

D. Turner: If this is going to happen it needs to be moved on.

Motion: (S. Tilton, R. Mitchell), the Council voted to adjourn. **Motion continued:** Unanimously approved.